

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KOPPERS, INC.,)	
)	
Plaintiff,)	Case No. 09-cv-0459
)	
v.)	Chief Judge Gary L. Lancaster
)	
ENERGY RESOURCES GROUP, INC.,)	<u>JURY TRIAL DEMANDED</u>
)	
Defendant.)	

**PLAINTIFF AND COUNTERCLAIM DEFENDANT'S MOTION
FOR PARTIAL SUMMARY JUDGMENT ON COUNTERCLAIM**

Plaintiff and Counterclaim Defendant Koppers Inc. ("Koppers"), through its attorneys, files the following Motion for Partial Summary Judgment on Counterclaim.

1. On April 17, 2009, Koppers filed this action against Defendant Energy Resources Group, Inc. ("ERG") alleging Breach of Contract (Count I), Breach of Warranty (Count II), and Professional Negligence (Count III).

2. Koppers alleged that ERG breached a written agreement under which ERG undertook to inspect and repair a Turbine/Generator set located in Montgomery, Pennsylvania. Koppers contends that ERG breached the agreement when ERG failed to timely return the Turbine/Generator to Koppers in working order and failed to properly align the shaft that connects the turbine to the generator.

3. ERG filed an Answer and Counterclaim in which it admitted the existence of an agreement and alleged that Koppers breached the Agreement (Count I) when it failed to pay ERG the amounts it charged for services rendered under the Agreement. ERG alternatively pled that Koppers is liable in unjust enrichment (Count II).

4. As detailed in Koppers' Brief in Support of this Motion for Partial Summary Judgment, the parties do not dispute that the written agreement controls the parties' respective duties and obligations concerning ERG's agreement to inspect and repair the Turbine/Generator.

5. Because the parties' relationship is governed by the agreement, ERG cannot as a matter of law recover in unjust enrichment.

6. Koppers moves to dismiss on summary judgment ERG's count for unjust enrichment (Count II).

WHEREFORE, Counterclaim Defendant Koppers Inc. prays for an order dismissing, with prejudice, Count II of Energy Resources Group, Inc.'s Counterclaim for Unjust Enrichment.

Date: January 17, 2011

Respectfully submitted,

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O'KEEFE, LLC

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Counsel for Plaintiff and Counterclaim
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CERTIFICATE OF SERVICE

I hereby certify that on January 17, 2011, a copy of the foregoing Plaintiff and Counterclaim Defendant's Motion for Partial Summary Judgment on Counterclaim was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system. The following parties of record will be noticed via the Court's electronic filing system:

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